UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BARBARA STUART ROBINSON, Plaintiff/Counter Defendant, v. GREEN RIVER COMMUNITY COLLEGE, Defendant/Counter Claimant.	CASE NO. C10-0112-MAT ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ADDRESSING OTHER PENDING MOTIONS

INTRODUCTION

Plaintiff proceeds *pro se* and *in forma pauperis* (IFP) in this civil suit against defendant Green River Community College. Plaintiff raises a variety of claims against defendant, including discrimination, retaliation, harassment, and breach of quasi contract. (Dkt. 5.) Defendant denies plaintiff's allegations, raises a number of affirmative defenses, and raises a counterclaim asserting that this action is without reasonable cause, frivolous, and without factual or legal foundation. (Dkt. 26.)

There are currently several motions pending in this matter, including plaintiff's motion

for summary judgment (Dkt. 37), defendant's cross motion for summary judgment (Dkt. 56), defendant's motion for relief under Rule 11 of the Federal Rules of Civil Procedure (Dkt. 38), and defendant's motion for continuance of pretrial deadlines (Dkt. 75). Having considered the pending motions, along with the remainder of the record, the Court finds that plaintiff's claims should be dismissed on summary judgment.[1] The Court further finds that defendant's motion for a continuance should be stricken as moot and its motion for Rule 11 sanctions should be denied.

BACKGROUND

Plaintiff is, by her description, mentally ill, suffering from bipolar/manic depressive disorder and "[i]rate behavior." (Dkt. 5 at 2-3; Dkt. 65 at 2.) Plaintiff, then a student at Green River Community College (hereinafter "College"), was involved in a disruptive incident on campus on January 6, 2010. (Dkt. 54-2 at 4; Dkt. 56 at 29-30, ¶¶3-4 and at 38, ¶4(a).) Campus security responded to the scene and observed plaintiff to be in an emotionally escalated state. (Dkt. 56 at 30, ¶4; *see also* Dkt. 65, ¶¶6, 9.) The Auburn Police Department ultimately removed plaintiff from campus. (Dkt. 56 at 30-31, ¶4; Dkt. 54-2 at 4.)

The College held a "Conduct Hearing" with plaintiff on the day following the incident to consider the allegation that she had violated its Student Conduct Code standard WAC 132J-125-125, Interference/Intimidation. (Dkt. 56 at 33-34, ¶¶3-4 and at 37.) As a result of that hearing, the College placed plaintiff on disciplinary suspension, for one academic quarter,

1 Plaintiff voluntarily dismissed claims brought against the United States Equal Employment Opportunity Commission (EEOC) (*see* Dkt.52), the only other defendant named in her complaint. Plaintiff also discusses, in her motion for summary judgment, incidents and issues relating to Tacoma Community College (TCC). (Dkt. 37.) However, TCC is not a party to this action and any incidents or issues relating to TCC are not relevant to the current case. This Order, therefore, does not address any issues or claims relating to either the EEOC or TCC.

due to violation of its Student Conduct Code. (Dkt. 56 at 25, ¶3 and at 37.)

By letter dated January 7, 2010, the College provided written documentation of the suspension and advised plaintiff of her right to appeal. (*Id*. at 37.) (*See also* Dkt. 54-2 (January 15, 2010 letter again advising plaintiff as to appeals process).) The letter reflects that plaintiff informed the College during the Conduct Hearing that she had a disability. (Dkt. 56 at 38.) The letter advised plaintiff that she could, at any time, provide the College with written medical documentation or information about her disability so that it could "coordinate academic accommodations[.]" (*Id*.)[2]

DISCUSSION

A. Motions for Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Genuine issues of material fact that preclude summary judgment are "disputes over facts that might affect the outcome of the suit under the governing law[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. *Celotex*, 477 U.S. at 322-23.

In deciding a summary judgment motion, the court must view all facts and inferences

2 The parties submitted other facts in support of their arguments. The Court includes herein only those facts pertinent to the resolution of the claims as discussed in this Order.

therefrom in the light most favorable to the nonmoving party. *See Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). "[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial[,]" *Anderson*, 477 U.S. at 256 (citing Fed. R. Civ. P. 56(e)), and must present significant and probative evidence to support its claim or defense, *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The non-moving party fails to meet its burden if "'the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.'" *Id*. (quoting *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986)).

Plaintiff alleges defendant discriminated against her in violation of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and § 504 of the Rehabilitation Act (RA), 29 U.S.C. § 794(a). (Dkt. 5.) She alleges retaliation in violation of various state laws, Federal Sector Equal Employment Opportunity processing regulations, 29 C.F.R. Part 1614, and the Federal Privacy Act, 5 U.S.C. § 552a. (*Id*.) Plaintiff also alleges unlawful harassment under state law and breach of quasi contract. (*Id*.) Additionally, although she does not assert such a claim in her complaint, plaintiff alleges, in her motion for summary judgment, a violation of her due process rights. (*See* Dkt. 37.) For the reasons described below, the Court finds defendant entitled to dismissal of plaintiff's claims on summary judgment and, therefore, no basis for granting plaintiff the relief requested in her motion for summary judgment.

1. Disability Discrimination:

Title II of the ADA prohibits discrimination on the basis of disability by public entities, while § 504 of the RA prohibits disability discrimination in federally-funded programs. *Lovell*

v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002). Title II of the ADA specifically provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Similarly, the RA provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794(a).

To establish a prima facie case of a Title II ADA violation, plaintiff must show that (1) she is a qualified individual with a disability; (2) she was excluded from participation in or otherwise discriminated against with regard to the College's services, programs, or activities; and (3) the exclusion or discrimination was by reason of her disability. *Lovell*, 303 F.3d at 1052 (citing *Weinreich v. Los Angeles County Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)). An RA violation requires a showing that plaintiff (1) is handicapped within the meaning of the RA; (2) is otherwise qualified for the benefits or services sought; (3) was denied the benefits or services solely by reason of her handicap; and that (4) the College receives federal financial assistance. *Id.*

While defendant does not stipulate that plaintiff has a qualifying disability under either the ADA or the RA, or that it knew of the alleged disability at the time of plaintiff's suspension, it takes the assertion as to plaintiff's disability as true for purposes of summary judgment. Defendant argues that, in any event, plaintiff fails to show a causal link between her suspension from the College and her alleged disability. The Court agrees with defendant.

Plaintiff repeatedly asserts that her suspension resulted from discrimination based on her mental illness. However, nowhere in the many different documents filed by plaintiff in this matter does she point to or provide any evidence to support this contention.

In contrast, defendant provides declarations and documentation supporting its contention that plaintiff was suspended due to her conduct on January 6, 2010, not due to any disability. (*See*, *e.g.*, Dkt. 56 at 35 (declaration of Lesley Hogan, VP, Human Resources of the College, stating that plaintiff was placed on disciplinary suspension for violating the College's student conduct code); *id*. at 29-31 (declaration of Fred Creek, Director of Campus Safety at the College, describing the January 6, 2010 incident in detail, including his personal observations of plaintiff's escalated emotional state and interactions with another student and staff, plaintiff's failure to cooperate with requests that she leave campus, and his call to the police department to escort plaintiff off campus); and *id*. at 33-34, 37-38 (declaration of Timothy Malroy, Assistant Director of Student Services at the College, describing the conduct hearing he held on January 7, 2010 and asserting that the decision to suspend plaintiff resulted from her behaviors on January 6, 2010, not her alleged disability; attaching letter describing hearing and one quarter suspension).) Documentation provided by defendant also demonstrates the College's willingness to coordinate academic accommodations based on disability if plaintiff chose to re-enroll in the college following the one quarter suspension. (*Id*. at 38; Dkt. 59, ¶ 6.)

While plaintiff denies that she ever intimidated any student or person at the College, or that she posed any danger to such individuals or the College as a whole, she does not refute the basic facts that she was involved in an incident in which campus security was called, in which she was observed to be in an emotionally escalated state, and that ultimately required the

assistance of the police department in order to effectuate her removal from campus. Nor does she provide any evidence, let alone significant and probative evidence, to support her assertion of discrimination. *See generally Intel Corp.*, 952 F.2d at 1558. Instead, plaintiff's allegation of a discriminatory animus is wholly conclusory and, therefore, insufficient to survive dismissal of her ADA and RA claims on summary judgment.

2. Due Process and State Law Claims:

Plaintiff asserts, in her motion for summary judgment, that the College violated her right to due process. (Dkt. 37 at 1.) She also alleges, in her complaint, violations of various state laws and a breach of contract claim. However, none of these claims may proceed against defendant.

Defendant argues that plaintiff's claims should be dismissed because the State is not a person for purposes of a claim under 42 U.S.C. § 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). The Court construes this argument as asserting defendant's immunity pursuant to the Eleventh Amendment. *See Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997) ("Claims under § 1983 are limited by the scope of the Eleventh Amendment."; citing *Will*, 491 U.S. at 70, as holding "that 'States or governmental entities that are considered "arms of the State" for Eleventh Amendment purposes' are not 'persons' under § 1983.") *See also generally California Franchise Tax Bd. v. Jackson*, 184 F.3d 1046, 1048 (9th Cir. 1999) (Eleventh Amendment immunity "can be raised by a party at any time during judicial proceedings or by the court sua sponte.") (cited cases omitted).

"The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state." *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053

(9th Cir. 1991) (cited sources omitted). This jurisdictional bar extends to state agencies and departments, and applies whether legal or equitable relief is sought. *Id*. (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984)). *See also Cerrato v. San Francisco Comty. Coll. Dist*., 26 F.3d 968, 972 (9th Cir. 1994) (the Eleventh Amendment bars a federal court from hearing claims against "dependent instrumentalities of the state.") (citing *Pennhurst State Sch. & Hosp.*, 465 U.S. 89).

The College is a community college district created by state statute. RCW 28B.50.040. As a state college, the College is an arm of the state and entitled to Eleventh Amendment immunity. *See Lawrence Livermore Nat'l Lab*, 131 F.3d at 839 (concluding University of California is a "state agency" for purposes of sovereign immunity analysis); *Cerrato*, 26 F.3d at 972 (holding that community college districts are "dependent instrumentalities" of California); *Goodisman v. Lytle*, 724 F.2d 818, 820 (9th Cir. 1984) (implying that the University of Washington was immune as an "arm of the state"); and *Centralia College Educ. Assn. v. Bd. of Trs. of Cmty. Coll. Dist. No. 12*, 82 Wn.2d 128, 130-35, 508 P.2d 1357 (1973) (holding that Washington State community college districts are state agencies). *See also Green v. Shoreline Comty. Coll.*, No. C06-465P, 2006 U.S. Dist. LEXIS 92490 at *37-38 (W.D. Wash. Dec. 21, 2006) (finding Shoreline Community College an arm of the state and entitled to Eleventh Amendment immunity and dismissing breach of contract and constructive discharge claims); *Arshad v. Columbia Basin Coll.*, No. CV-05-5019-LRS, 2006 U.S. Dist. LEXIS 33922 at *3-5 (E.D. Wash. May 25, 2006) (finding Columbia Basin College, a community college, immune

under the Eleventh Amendment as a state agency from §§ 1981 and 1983 damage claims).[3]

The Eleventh Amendment, therefore, bars any due process claim brought here by plaintiff. *See Will*, 491 U.S. at 66 and *Quern v. Jordan*, 440 U.S. 332, 339-45 (1979). It likewise bars plaintiff's claims asserting violations of state law, *Pennhurst State Sch. & Hosp.*, 465 U.S. at 124-25; *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973-74 (9th Cir. 2004), including those sounding in contract, *see, e.g.*, *Lawrence Livermore Nat'l Lab*, 131 F.3d at 839 (finding breach of contract claim would be barred by sovereign immunity); *Green*, 2006 U.S. Dist. LEXIS 924490 at *38. *But see Phiffer v. Columbia River Corr. Inst.*, 384 F.3d 791, 792-93 (9th Cir. 2004) (State not entitled to Eleventh Amendment immunity under either Title II of the ADA or the RA). Accordingly, defendant is entitled to dismissal of those claims.[4]

3. Retaliation:

Plaintiff also alleges retaliation against her in violation of regulations governing Federal Sector Equal Employment Opportunity, 29 C.F.R. Part 1614, and the Federal Privacy Act, 5 U.S.C. § 552a. (Dkt. 5 at 4.) It is not clear whether plaintiff intended these claims to lie against defendant. *See supra* n. 1. However, even assuming this intention, these claims fail at

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3 The Ninth Circuit applies a five-factor test to the determination of whether a governmental agency is properly considered an arm of the state. *See Mitchell*, 861 F.2d at 201 (the factors include "whether a money judgment would be satisfied out of state funds, whether the entity performs central governmental functions, whether the entity may sue or be sued, whether the entity has the power to take property in its own name or only the name of the state, and the corporate status of the entity.") *See also Holz v. Nenana City Pub. Sch. Dist.*, 347 F.3d 1176, 1182 (9th Cir. 2003) (noting that the first factor, whether a money judgment would be satisfied out of state funds, is the most important of the five factors). Given the above-described case law, the Court finds the applicability of Eleventh Amendment immunity clear in this case.

4 Defendant raises other arguments in relation to these claims, including plaintiff's failure to complete the appeals process and the fact that various state statutes identified by plaintiff are either inapplicable given the facts of this case or do not actually exist. However, because the Court finds the applicability of Eleventh Amendment immunity, it does not address the merits, or lack thereof, of these claims.

a fundamental level.

29 C.F.R. Part 1614 contains regulations governing employment discrimination claims in the federal sector. Given that plaintiff was not an employee of the College and that the College is not a federal entity, these regulations are clearly inapplicable in this case. *See* 29 C.F.R. § 1614.101. Likewise, "[t]he Federal Privacy Act does not apply to state agencies." *United States v. Streich*, 560 F.3d 926, 935 (9th Cir. 2009) (citing 5 U.S.C. § 552a(a)(1)), *cert. denied* 130 S.Ct. 320. Moreover, that statute does not relate to discrimination or retaliation; it relates to a federal agency's disclosure of information to the public. *Id*. at 1372-73. Accordingly, defendant is also entitled to dismissal of these claims on summary judgment.

B. Other Pending Motions

As indicated above, defendant also filed a motion for Rule 11 sanctions and a motion for continuance of the pretrial deadlines in this case. The motion for a continuance of the pretrial deadlines (Dkt. 75) is moot given the conclusion that defendant is entitled to summary judgment dismissing all of plaintiff's claims. The Court further, for the reasons described below, finds no basis for Rule 11 sanctions.

Defendant seeks Rule 11 sanctions in relation to a motion for default judgment filed by plaintiff in March 2010. Plaintiff sought default judgment based on her perception that defendant had not timely submitted an answer to her complaint. (*See* Dkt. 19.) She requested a judgment in the amount of $3,638,764.00. (*Id*.)

By Order dated April 14, 2010, the Court directed defendant to respond to plaintiff's motion for default judgment on or before May 3, 2010. (Dkt. 35.) Shortly thereafter, on April 20, 2010, plaintiff withdrew her motion, stating: "State of Washington chose to appear for the

defendant when they did not have to, so a motion for default would be [frivolous][5] to be consider[ed] by this court, so I wish to strike it." (Dkt. 36.)

In arguing for sanctions, defendant points to plaintiff's failure to properly effectuate service in this matter and notes that it advised plaintiff as to the method of proper service prior to the filing of her motion for default. Defendant also avers that plaintiff filed her motion on March 8, 2010, despite the fact that defendant had already filed its notice of appearance on March 5, 2010 (Dkt. 18). Defendant asserts that it began working on a response to plaintiff's motion for default well in advance of May 3, 2010 given the large penalty sought by plaintiff and the fact that the motion itself was quite unclear. It contends that sanctions are warranted given plaintiff's admission that the motion was frivolous, and given that it spent a considerable amount of time and state resources in responding to this frivolous motion.

Defendant notes that Rule 11 may be applied to both represented and *pro se* litigants, *see, e.g.*, *Maduakolam v. Columbia University*, 866 F.2d 53, 56 (2d Cir. 1989), and asserts that the violation was not expunged by the withdrawal of the motion, *see Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) (holding that a court has the authority to impose Rule 11 sanctions "regardless of the [voluntary] dismissal of the underlying action.") It seeks reimbursement for four hours of work at a rate of $175.00 per hour.

The Court may impose Rule 11 sanctions if, *inter alia*, a paper filed with the Court is frivolous. Fed. R. Civ. P. 11(b)(2), (c); *G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003). A frivolous filing is one that is "both baseless and made without a

5 As stated by defendant, it is apparent that plaintiff intended to use the term "frivolous" in stating that her motion was "frizzless" (Dkt. 36).

reasonable and competent inquiry." *Townsend v. Holman Consulting Corp*., 929 F.2d 1358, 1362 (9th Cir. 1991). The Court applies an objective standard in assessing allegedly frivolous filings. *G.C. and K.B. Investments, Inc*., 326 F.3d at 1109 (citing *Townsend*, 929 F.2d at 1362). "'[T]he subjective intent of the . . . movant to file a meritorious document is of no moment. The standard is reasonableness.'" *Id*. (quoting *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986)). Also, "[a]lthough Rule 11 applies to *pro se* plaintiffs, the court must take into account a plaintiff's *pro se* status when it determines whether the filing was reasonable." *Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994) (also noting that a plaintiff proceeding IFP "is not protected from the taxation of costs to which a prevailing defendant is entitled.") *See also Maduakolam* 866 F.2d at 56 ("While it is true that Rule 11 applies both to represented and *pro se* litigants, the court may consider the special circumstances of litigants who are untutored in the law.") (citing advisory committee's notes to Rule 11).

As previously found by the Court, plaintiff did not properly serve defendant in this matter. (Dkt. 64.)[6] Defendant correctly notes that it advised plaintiff as to proper service prior to the filing of the motion for default judgment. (*See id*. at 3.) This fact supports the contention that plaintiff filed the motion for default without making a reasonable inquiry. However, other facts argue against the imposition of sanctions.

Contrary to defendant's contention, both plaintiff's motion for default and defendant's notice of appearance were docketed in this matter on March 5, 2010. (Dkts. 18-19.) Upon

6 The Court issued an order directing service by a United States Marshall, but later struck the order after defendant indicated its willingness to proceed as though service of process had occurred. (Dkts. 67, 70 & 72.)

realizing that defendant had filed a notice of appearance, plaintiff – proceeding *pro se*, IFP, and with asserted serious mental impairments – promptly withdrew her motion. (Dkt. 36.) She withdrew the motion despite the fact that, months later, she continued to misunderstand the rules of service and believed that defendant had been properly served. (*See* Dkt. 64 at 5; Dkt. 65.) Taking all of these factors into consideration, the Court does not find an award of sanctions under Rule 11 appropriate in this case.

CONCLUSION

For the reasons described above, plaintiff's motion for summary judgment (Dkt. 37) is DENIED, defendant's motion for summary judgment (Dkt 56) is GRANTED, and this matter is DISMISSED with prejudice. Defendant's motion for continuance of pretrial deadlines (Dkt. 75) is STRICKEN as moot and defendant's motion for Rule 11 sanctions (Dkt. 38) is DENIED. The Clerk is directed to send a copy of this Order to the parties.

DATED this 7th day of October, 2010.

Mary Alice Theiler
United States Magistrate Judge